

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6860

Petitions of Vermont Electric Power Company, Inc. and Green Mountain Power Corporation for a Certificate of Public Good authorizing VELCO to construct the so-called Northwest Vermont Reliability Project, said project to include: (1) upgrades at 12 existing VELCO and GMP substations located in Charlotte, Essex, Hartford, New Haven, North Ferrisburg, Poultney, Shelburne, South Burlington, Vergennes, West Rutland, Williamstown, and Williston, Vermont; (2) the construction of a new 345 kV transmission line from West Rutland to New Haven; (3) the construction of a 115 kV transmission line to replace a 34.5 kV and 46 kV transmission line from New Haven to South Burlington; and (4) the reconductoring of a 115 kV transmission line from Williamstown, to Barre, Vermont

DEPARTMENT'S REPLY REGARDING THE FERRY ROAD CROSSING
IN CHARLOTTE, VERMONT

The Department responds to Charlotte's "Proposed Findings of Fact and Conclusions of Law and Order Regarding Ferry Road" ("Ferry Road Brief") submitted on or about December 17, 2004.

Definitions in this document shall have the same meaning as in Section II of the Department's proposal for decision submitted in this docket on November 24, 2004.

The Board should not make the findings or conclusions requested in Charlotte's brief. Instead, the Board should make findings and conclusions in accordance with the Department's proposal for decision, proposed findings of fact and conclusions of law regarding the Ferry Road crossing in Charlotte, Vermont, and prior reply brief. The Department maintains its request that the Board should allow VELCO an opportunity to reach an accommodation with the Waldorf School and present an overhead option during post-certification review.

In today's reply, DPS will not reiterate all of the arguments it made previously but rather address several specific points. In summary, DPS contends concerning the orderly development criterion that:

- Charlotte presents internally inconsistent and incoherent theories regarding the orderly development criterion, which the Board should not apply. For example, in the Ferry Road Brief, Charlotte asks the Board to deny the NRP under that criterion based on noncompliance with the local plan that has an unspecified "regional" effect, yet its reply brief in this matter states that the Board cannot deny a project under 30 V.S.A. § 248(b)(1) for noncompliance with a local plan.
- There is no document in the record constituting the "recommendations" of the Charlotte planning commission or selectboard under § 248(b)(1). Therefore, there are no such

recommendations to apply to the Ferry Road crossing. Town plan provisions cannot constitute "recommendations" under § 248(b)(1), since the General Assembly determined not to require conformance with the town plan but rather established two different categories that are separate from each other: the "recommendations" of municipal and regional bodies and the "land conservation measures" in a town plan.

- Charlotte's alleged pre-application notification to VELCO of its plan does not constitute "recommendations" of the planning commission under 30 V.S.A. § 248(f).
- The plan provisions relied on by Charlotte to seek denial of the NRP in its Ferry Road Brief do not constitute "land conservation measures" within the meaning of § 248(b)(1).
- In the alternative, Charlotte fails properly to apply its plan, continuing to ignore key language in the plan which states how it is to be interpreted and applied.

Concerning the aesthetics criterion, DPS incorporates as relevant its contentions under the orderly development criterion and contends, among other arguments, that:

- Support for the Department's position on line burial as the "option of last resort" is provided by Charlotte's determination, in the face of GMP's policy to require payment for burial, to acquiesce to GMP's installation of overhead distribution lines in the Ferry Road area.
- The Knowles farm was conserved after the NRP petition was filed and with the existing transmission and distribution corridors being part of the "rural landscape" of the Ferry Road area.
- If property values are high in the Ferry Road area, then they are high in the presence of existing transmission and distribution corridors.
- The Board should not approve Charlotte's alternate substation location, for which Charlotte has not proposed a path for the distribution lines that would need to exit the substation or performed an analysis of the aesthetic impacts.
- Charlotte has neither designed nor fully assessed the impact of its alternative corridor proposals. If the Board orders burial in the Ferry Road area, it should not limit VELCO to these proposed corridors.

In response to Charlotte's arguments concerning Act 250's Criterion 9(K) (public facilities, services, or lands), DPS contends that the Knowles farm is a privately owned property which does not

qualify as a public facility, service, or land under that criterion.

In response to Charlotte's request for denial of the NRP, the Department contends that this request contradicts the testimony of Charlotte's witness Dean Bloch that the town questions the design for the project, not the need for it.

DPS makes these and other arguments below.

I. Charlotte's theories regarding the orderly development criterion are internally inconsistent and lack coherence, and therefore the Board should not apply them to Ferry Road.

On page 25 of its Ferry Road Brief, Charlotte incorporates its legal theories from its proposed findings of fact and conclusions of law filed on November 24, 2004, asks the Board to apply them to the Ferry Road crossing in Charlotte, Vermont and, on this basis, deny issuance of a CPG. DPS will address in turn: (a) inconsistencies among the various documents submitted by Charlotte regarding the orderly development criterion, rendering Charlotte's position an unsuitable basis for decision on Ferry Road, (b) Charlotte's inappropriate use of town plan provisions as a substitute for recommendations under § 248(b)(1) applicable to Ferry Road, (c) Charlotte's allegation that it notified VELCO of its plan prior to VELCO's filing a petition in this matter, (d) Charlotte's incorrect claim that "land conservation measures" in its plan require undergrounding of the Ferry Road crossing, and (e) Charlotte's failure to apply its own plan according to its terms.

A. With respect to § 248(b)(1), Charlotte's Ferry Road Brief and incorporated proposed findings from November 24, 2004, when taken together with Charlotte's testimony and reply brief, present the Board with a confusing and inconsistent interpretation of that criterion.

Charlotte has now filed several documents with the Board concerning the orderly development criterion. Taken together, these documents present the Board with a confused and internally inconsistent theory of the orderly development criterion. The Board has no coherent theory of that criterion from Charlotte that it can apply to the Ferry Road crossing or, for that matter, any other location.

For example, Charlotte has no consistent position on whether the Board can deny a CPG based on noncompliance with a town plan. On the one hand, Charlotte takes the view the Board may do so. Specifically, the Ferry Road Brief asks the Board to deny approval of the NRP based on alleged

noncompliance with Charlotte's plan that, in some vague and unstated way, Charlotte believes has regional effect.¹ Charlotte Ferry Road Brief at 27. The incorporated proposed findings filed November 24, 2004 contend that the Board "has the authority to deny" a CPG where "a project's failure to comply with applicable/relevant/pertinent provisions of local or regional plans . . . would result in undue interference with orderly development in region in which a transmission project is located." Charlotte's Proposed Findings and Conclusions at 29.

Yet Charlotte also takes the view that denial for noncompliance with the local plan is not available under § 248(b)(1). Charlotte's reply brief specifically states that the Board cannot deny a CPG because a project does not comply with a town plan. Charlotte Reply Brief at 7. It is no persuasive answer to claim that Charlotte's argument about aggregating town plan compliance in some region-wide fashion makes its position consistent, because if the Board cannot deny a CPG for noncompliance with a town plan, then the Board cannot deny a CPG for such noncompliance, whether or not the noncompliance is somehow aggregated. Accordingly, the Board should be left wondering whether Charlotte's own legal theories support the result requested in its Ferry Road Brief.

Charlotte similarly has no consistent position on whether § 248(b)(1) even requires conformance with the local or regional plan. Importantly, by incorporation of proposed findings submitted on November 24, 2004, the Ferry Road Brief relies on Charlotte town planner Dean Bloch's testimony to support denial under the orderly development criterion (see Ferry Road Brief at 1, 26). In his testimony, Mr. Bloch, in discussing the orderly development criterion and the Charlotte plan, equates the concepts of "conformance" and giving "due consideration." He is specifically asked on page 9 of his testimony whether the project could "be designed in a way that would conform with the Charlotte Town Plan" and he gives an affirmative answer concerning how the NRP would be "compatible and give due consideration to" the Charlotte Plan if the transmission line were buried. In the next question, Mr. Bloch is asked whether there are other ways to design the NRP "that would be in conformance with and give due consideration to" the Charlotte Plan, and he answers affirmatively that, if burial is not required, the poles height and configuration should have the least possible visual impact. Bloch, pf. at 9-10.

Contradicting this equation of "conformance" and "due consideration" by Charlotte's only

¹Charlotte's failure to specify how the alleged noncompliance with its plan has regional impact separately undermines its claim of undue interference with orderly development of the region.

planning witness, Charlotte's reply brief unequivocally states that "the Board is **not** required to determine if a project seeking a CPG complies with either the local or regional plan" Charlotte Reply Brief at 7 (emphasis in the original). Charlotte's reply brief is correct on this one point, but the inconsistency in its position undermines the credibility of Mr. Bloch's testimony on the orderly development criterion, since presumably all of his testimony on the criterion is affected by his equation of "conformance" with "due consideration." Since the Ferry Road Brief relies on Mr. Bloch's testimony, the inconsistency undermines Charlotte's position on the Ferry Road crossing.

- B. Charlotte has made no "recommendations" under § 248(b)(1) that are applicable to Ferry Road or otherwise; its reliance on town plan provisions to be such recommendations is misplaced.

The Ferry Road Brief claims that the "recommendations" of the Charlotte planning commission and selectboard are "in part" contained in the Charlotte plan. Ferry Road Brief at 26. The Ferry Road Brief does not say where else those "recommendations" are contained. *Id.* DPS contests Charlotte's claim.

1. Charlotte's town plan provisions are not "recommendations" under § 248(b)(1).

Charlotte's claim on page 26 of its Ferry Road Brief that the town plan can constitute "recommendations" under § 248(b)(1) is in error. The legislature cannot have intended that the term encompass town plan provisions. In crafting § 248(b)(1), the General Assembly independently required the Board to give due consideration to the "recommendations" of town planning commissions and selectboards and the "land conservation measures" in the local plan. 30 V.S.A. § 248(b)(1). This language specifically creates separate categories for "recommendations" of various municipal and regional entities, on the one hand, and a subset of the provisions in a local plan, on the other hand. The legislature is presumed to use its words advisedly. Trombley v. Bellows Falls Union H.S., 160 Vt. 101, 104 (1993). If the General Assembly had wanted to require "due consideration of the provisions of the local plan," it easily could have said so.

This reasoning is confirmed by the difference between Act 250 and § 248(b)(1). As shown above, Charlotte acknowledges that, in contrast to Act 250, § 248(b)(1) does not require conformance with the town plan. Compare 30 V.S.A. § 248(b)(1) with 10 V.S.A. § 6068(a)(10). Moreover, as

demonstrated by the Department's initial proposal for decision at 55-6, the General Assembly affirmatively chose not to amend § 248 to require such conformance when it incorporated other Act 250 criteria into § 248. Accordingly, the General Assembly must have meant something other than the provisions of a town plan when it used the term "recommendations" in § 248(b)(1).

2. The record contains no documents constituting the "recommendations" of the Charlotte planning commission or selectboard.

Charlotte's Ferry Road Brief points to no documents other than the town plan that it alleges constitute the recommendations of the town planning commission or selectboard, and the record does not contain any such documents. Mr. Bloch's testimony attaches no minutes or resolutions of the Charlotte planning commission or selectboard.

The Department submits that the logical meaning of "the recommendations of the municipal and regional planning commissions" and "recommendations of the municipal legislative bodies" made "with respect to an in-state facility" under § 248(b)(1) is a document stating the recommendations of such a body pertaining to the proposed facility, voted favorably by a majority of the body. In order for the planning commissions and selectboards to make recommendations as individual entities, a majority of each such body is required to vote in favor of the recommendations, in open session, and the actions taken must be recorded in writing. 1 V.S.A. §§ 172, 312. Yet Charlotte has provided the Board only with testimony by its planner and selectboard assistant, not minutes or resolutions showing the recommendations of the actual bodies referenced in the statute pertaining to the NRP.

Thus, separate and apart from the issue of applicability of § 248(f) to the "recommendations" to be considered under § 248(b)(1), there is simply no document in the record constituting the recommendations of the Charlotte planning commission or selectboard applicable to the proposed Ferry Road crossing.

3. Charlotte's pre-application notification of the town plan does not constitute recommendations of the planning commission under § 248(f).

Charlotte claims, without supporting citation, that it "notified" VELCO of language in its plan regarding undergrounding prior to June 2003 (which is when VELCO filed its application). Ferry Road Brief at 26. This claim appears to imply that Charlotte somehow satisfied its obligations under §

248(f)'s pre-application requirements through notice of the town plan.

The Department disagrees. It maintains not only that a town body must issue a specific document stating the recommendations pertaining to a project under § 248, but also that the town and regional planning commissions must do so within the period required by § 248(f) in order for their documents to constitute "recommendations" under § 248(b)(1).

Section 248(f) is not simply a requirement that a utility notify a town or region of an application and the town or region notify the utility of its plan. Such a construction would fail to give full effect to the language of § 248(f), which requires more than just notice: It sets out a hearing process and time line for the issuance of recommendations by the municipal and regional planning commissions. Again, the General Assembly is presumed to use its words advisedly. Trombley, 160 Vt. at 10.

Construing § 248(f) merely to require notice from the applicant also would be redundant with § 248(a)(4)(C), which separately requires a § 248 applicant to serve the application on the municipal and regional planning commissions and municipal legislative body.²

Construing § 248(f) merely to require notice from a town or region of its plan would similarly serve little purpose, as the plans issued by a town and region are publically available and issued after broad public notice and process. 24 V.S.A. §§ 4348, 4381-4387.

C. The Ferry Road Brief inappropriately asks the Board to treat plan provisions which do not address conservation as "land conservation measures."

Charlotte's Ferry Road Brief acknowledges that the Board is to give due consideration to "land conservation measures" within a local plan. However, it bases its arguments not on provisions of the town plan which seek to conserve land, but rather on provisions which encourage undergrounding of electric lines generally, regardless of whether the benefitting land or the land which forms the view is conserved or not conserved. See, e.g., Charlotte's proposed Finding 22 in the incorporated proposed findings filed November 24, 2004 at 6. In this regard, the conserved status of the nearby Knowles Farm does not translate a general provision seeking undergrounding of utility lines into a "land conservation

²DPS notes that if a town believes it is not provided with specific enough plans under § 248(f), one of its recommendations under that section easily can be that the Board should require the petitioner to submit more specific plans prior to making a determination under § 248(b)(1).

measure,” since the plan provision itself will still purport to apply to non-conserved land.

The Department urges the Board to give effect to the statutory language and qualify provisions from town plans as “land conservation measures” where they actually constitute measures to conserve land. The broad construction of this phrase apparently advanced by Charlotte is negated by the legislature’s determination not to require conformance with the entirety of the town plan but rather to require due consideration of a subset of those provisions, the “land conservation measures contained in” such a plan. 30 V.S.A. § 248(b)(1).

That broad construction is negated further still by Act 250 case law eschewing the application in regulatory proceedings of “nonregulatory abstraction” from town plans. In re John A. Russell Corp., __ Vt. __, 838 A.2d 906, 912 (2003). Town plans have less force in § 248 proceedings than in Act 250, since “due consideration” is required rather than conformance. If town plans have less force in § 248 proceedings, then it makes little sense to give more force in § 248 proceedings, as Charlotte apparently would, to generalized statements from a town plan.

D. Charlotte fails to apply its own plan properly.

Even if the undergrounding provisions relied on by Charlotte in its Ferry Road Brief were “land conservation measures” or “recommendations” under § 248(b)(1) – a point DPS does not concede – Charlotte continues in that brief, as it did previously, to ignore key language from its plan that governs the interpretation of the chief provision on which Charlotte relies. As detailed in the Department’s reply brief, that provision is a general *objective* of the Charlotte plan to place utilities underground. The plan itself states that its objectives are accomplished by policies contained in a different chapter of the plan and that it is those policies that “are meant to be used to review and guide development proposals.” See DPS Reply Brief at 16-17 and record citations therein.

Again as detailed previously by the Department, the operative policy provisions from the Charlotte plan “encourage” rather than mandate utility line undergrounding, necessarily requiring that the decision-maker exercise judgment in applying the provision. Department’s Proposal for Decision at 37-40, 169.

To protect the ratepayers of Vermont from the high costs of burial, DPS continues to argue that the Board, in making this judgment, apply the Department’s proposed “option of last resort” standard. In the instance of the Ferry Road crossing, at this stage the standard should be applied by giving VELCO

the opportunity to reach an accord with the Waldorf School, which may allow for an overhead construction that meets the Quechee test and is potentially less expensive than burial. If an accord is reached, VELCO should be allowed during post-certification review to present an overhead proposal for the Ferry Road crossing.

II. The Board should not adopt the aesthetics findings and conclusions as proposed in Charlotte's Ferry Road Brief.

DPS contends that the Board should not adopt aesthetics findings and conclusions concerning the Ferry Road crossing as proposed in Charlotte's Ferry Road Brief and instead should adopt the Department's proposed findings and conclusions. DPS incorporates, as relevant to the discussion of aesthetics in Charlotte's Ferry Road Brief, the above discussion of the Charlotte plan, particularly as it would apply to the issue of community standards under the Quechee test. DPS also will not here reiterate all of the arguments it has made in its proposal for decision, reply brief, and proposed Ferry Road findings that are applicable to the Ferry Road Brief but instead address particular points related to that brief.³

First, Charlotte's proposed finding concerning GMP's 2001 replacement of existing distribution poles with new, taller poles omits to mention key facts about that construction which support the Department's proposed "option of last resort" standard for burial. Specifically, Charlotte omits to mention in its brief that, at the time of the construction, Charlotte investigated the burial of those lines. Towns-Cross-337. It also omits to mention that GMP's willingness to bury lines is dependent on the

³In addition to the points noted below, the Department disputes any criticism implicit in Charlotte's proposed finding 56, which concerns the development of the Department's proposed Ferry Road alternative and the issue of participation of the Town or Ferry Road residents. Charlotte's Ferry Road Brief at 12. Communication is not a one way street, nor is the Department the only public entity involved in this proceeding whose constituency includes Charlotte residents. Charlotte did not consult the Department about Charlotte's proposal for an alternative substation, even though this proposal was submitted to the Board shortly after the May 2004 meeting among parties referenced in proposed finding 56. Bloch, supp. pf. at 5 (May 20, 2004); 6/11/04 tr. at 68-9 (Bloch) (vol. 1). There is no evidence in the record that Charlotte ever consulted the Department about the alternative routes discussed in Charlotte's Ferry Road Brief at 20-25. There is affirmative evidence in the record that Charlotte itself failed to consult with Ferry Road residents living east of the railroad tracks prior to filing the rebuttal testimony of James Emerson, which recommends routing the line either underground or overhead east of the tracks. Emerson, reb. at 6; 9/22/04 tr. at 84-7 (Bloch) (vol. 1).

requesting party's willingness to pay. Denis, reb. at 3-4. Thus, the Board reasonably can infer that, when confronted with an inability to order GMP to bury the distribution lines and a scenario in which Charlotte would have had to pay the cost of undergrounding, Charlotte chose to acquiesce in the overhead construction.

Second, Charlotte's emphasis on the conserved status of the Knowles Farm ignores two key points regarding that status: (a) the relevant easements were conveyed six months after the date VELCO filed this § 248 petition, and (b) at the time the scenic easement for the Farm was granted, transmission and distribution lines at the Ferry Road Crossing and in the vicinity of the Knowles Farm were in place. DPS-Cross-158; Exhibit DPS-DR-10 at 59; 8/5/04 tr. at 23-6 (Donovan) (vol. 1). Therefore, the existing transmission and distribution lines would have been part of the "rural landscape" referenced in the easement, and parties who took the easement such as the State of Vermont and Charlotte did so with notice of those lines and the NRP. See DPS-Cross-158 for the quoted phrase and the easement grantees.

Third, given that the views heading east on Ferry Road contain the existing transmission and distribution lines, Charlotte's suggestion of significant tourist impact is overstated. Exhibit DPS-DR-10 at 59; 8/5/04 tr. at 23-6 (Donovan) (vol. 1); Charlotte's Ferry Road Brief at 31. In this regard, the witness it relies on for this claim of tourist impact, James Donovan, disclaims any expertise in tourism and even, on cross-examination, stated that he had offered no evidence on tourism. Compare proposed finding 9 from Charlotte's Ferry Brief at 3 with 12/2/04 tr. at 157 (Donovan).

Fourth, Charlotte's reference to "property valuation impacts" on page 30 of its Ferry Road Brief continues to ignore that the present real estate market in Charlotte must account for the existence of the current transmission and distribution corridors in the Ferry Road area. The corridors are there, and noticeably so. Exhibit DPS-DR-10 at 59. Their presence cannot reasonably be denied, and therefore anyone who has purchased real property in the area must have purchased in the context of the existing corridors. This does not mean that the property values are depressed. Rather, if the property values are high in the area, then they are high in the presence of transmission and distribution lines. This logical inference undermines the likelihood of any serious general property value impact in the Ferry Road area from the NRP's proposed upgrade of the existing transmission line.⁴

⁴Under 30 V.S.A. § 112, compensation will be afforded to individual property owners for land
(continued...)

Fifth, DPS does not support Charlotte's proposed alternative location for a substation in the vicinity of Ferry Road. Mr. Bloch testified on cross-examination that Charlotte has no proposed path for each of the distribution lines that would need to exit the substation and has not evaluated the aesthetic impacts of the substation. 6/11/04 tr. at 67-8 (Bloch) (vol. 1). Further, the Department's aesthetic consultant has evaluated two other substation proposals for the Ferry Road area and found that, with recommended mitigation measures, each can be done in accordance with the Quechee test. Exhibits DPS-DR-1 at 25-6, DPS-DR-10 at 6; 6/17/04 tr. at 81-2 (Raphael) (vol. 1).

Sixth, at this time, there is insufficient information to approve Charlotte's proposed corridors in the area of Ferry Road, and Charlotte appears to acknowledge as much when it asks the Board to order VELCO to study these alternatives in detail. Charlotte's Ferry Road Brief at 31. In this regard, Charlotte's witnesses state that they have not designed its proposed underground installation, or assessed how much clearing would have to occur or the potential aesthetic impacts of the clearing. 12/2/04 tr. at 99 (Aabo), 155 (Donovan). Charlotte's design details filing contains little information on and no actual analysis of natural resource or archeological impacts of its proposed underground corridors. Aabo, design details pf.; Donovan, design details pf. for Charlotte.

In the event the Board determines to order burial in the area of Ferry Road, it should not limit the corridors to be considered to the alternatives suggested by Charlotte. While DPS has no objection in principle to inclusion of those alternatives, VELCO should be allowed to propose other corridors.

However, as stated above, the Board should not order undergrounding of the Ferry Road Crossing at this time. Instead, it should give VELCO an opportunity to reach an accord with the Waldorf School and present an overhead proposal during post-certification review.

III. The Knowles farm does not constitute a public facility, service, or land within the meaning of Act 250's Criterion 9(K).

Charlotte argues that the Board should deny the NRP under Act 250's Criterion 9(K) (public facilities, services and lands) based in primary part on impacts to the Knowles farm property and the associated conservation effort that Charlotte contends will be undermined by the NRP. Criterion 9(K)

⁴(...continued)
condemned for use in the NRP.

applies to “*governmental and public utility facilities, services, and lands.*” 10 V.S.A. § 6086(a)(9)(K) (emphasis added). The Knowles farm is privately owned. DPS-Cross-158. It is therefore not a governmental or public utility facility, service, or land. It is not enough that public funds are invested in a particular facility or land for it to be cognizable under this criterion. In re Omya, Inc. and Foster Bros. Farm, 1999 WL 33227550 at 34 (Vt.Env.Bd. May 25, 1999); In re St. Albans Group and Wal*Mart Stores, 1995 WL 404828 at 37 (Vt.Env.Bd. June 27, 1995), affirmed In re Wal*Mart Stores, Inc., 167 Vt. 75, 81-2 (1997). In fact, the Environmental Board has rejected considering historic districts to be “public facilities” under Criterion 9(K) on the grounds that public funds may be invested in many private facilities and such districts contain private structures. Id. Similarly, the investment of public monies in conservation easements over otherwise privately owned land would not alone be enough to trigger the protection of Criterion 9(K).

The Department does not mean to suggest that the Board should not consider the existence of public conservation and scenic easements to the Knowles farm property. The Board can and should consider them as relevant to the project context under the aesthetics criterion. The Department is here addressing the applicability of Criterion 9(K) only.

IV. Charlotte’s request for denial of the NRP contradicts its own testimony that it does not question the need for the project.

Charlotte asks the Board to deny the NRP “particularly in light of dispute over the need for the project (advanced by CLF and others)” Charlotte’s Ferry Road Brief at 33. Yet neither Charlotte’s Ferry Road Brief nor its incorporated proposed findings filed November 24, 2004 support this request by providing any proposed findings or arguments against the need for the NRP.

Importantly, this request in Charlotte’s briefs contradicts the testimony of Charlotte’s witness Mr. Bloch that “[t]he Town is contesting the design of the project, not the need for it.” Bloch, pf. at 10. A town which does not contest the need for the NRP concedes that need, including the evidence and argument in the record supporting the urgency of that need.

A party – particularly a governmental party – which does not contest the need for the NRP, but is concerned about its design, should work constructively to seek appropriate solutions to its design concerns, rather than subjecting Vermont electric customers to the potential reliability impacts if the NRP is denied. But instead of seeking conditions to require burial of the line, or other conditions to

mitigate potential impacts of the NRP, Charlotte asks for denial. The Board should reject the relief sought by Charlotte.

CONCLUSION

The Board should not make the findings and conclusions proposed in Charlotte's Ferry Road Brief. The Board should issue a CPG for the NRP as requested by the Department in its proposal for decision, proposed findings of fact and conclusions of law regarding Ferry Road, and reply brief. The Board should give VELCO the opportunity to reach an accord with the Waldorf School. If an accord is reached, VELCO should be allowed during post-certification review to present an overhead proposal for the Ferry Road crossing.

Dated at Montpelier, Vermont this 30th day of December, 2004.

Respectfully submitted,

VERMONT DEPARTMENT OF PUBLIC SERVICE

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cc: service list